



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

NANCY S. MONTINOLA,
Petitioner,

G.R. No. 198656

Present:

CARPIO, J., *Chairperson*,
DEL CASTILLO,
VILLARAMA, JR.,*
REYES, and **
LEONEN, JJ.

-versus-

PHILIPPINE AIRLINES,
Respondent.

Promulgated:
SEP 08 2014

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DECISION

LEONEN, J.:

Illegally suspended employees, similar to illegally dismissed employees, are entitled to moral damages when their suspension was attended by bad faith or fraud, oppressive to labor, or done in a manner contrary to morals, good customs, or public policy.

Petitioner Nancy S. Montinola (Montinola) comes to this court via a petition for review on certiorari under Rule 45 of the Rules of Court. She assails the decision¹ of the Court of Appeals² dated June 28, 2011 and its

* Designated acting member per S.O. No. 1767 August 27, 2014.

** Designated acting member per S.O. No. 1763 dated August 26, 2014 in relation to S.O. No. 1776 dated August 28, 2014.

¹ Rollo, pp. 41-53.

² Thirteenth Division, composed of Associate Justices Antonio L. Villamor, Jose C. Reyes, Jr., and Ramon A. Cruz.

resolution³ dated September 20, 2011 in *Philippine Airlines v. National Labor Relations Commission and Nancy S. Montinola*.⁴ The Court of Appeals affirmed the finding of the National Labor Relations Commission that petitioner was suspended illegally but deleted the award of moral and exemplary damages and attorney's fees.⁵

The deletion of the award of attorney's fees and moral and exemplary damages is the subject of this petition.

Montinola was employed as a flight attendant of Philippine Airlines (PAL) since 1996.⁶ On January 29, 2008, Montinola and other flight crew members were subjected to custom searches in Honolulu, Hawaii, USA. Items from the airline were recovered from the flight crew by customs officials. Nancy Graham (Graham), US Customs and Border Protection Supervisor, sent an email to PAL regarding the search. The email⁷ contained a list of PAL flight crew members involved in the search:

FP CHUIDIAN, JUAN DE GUZMAN
FS CARTAGENA, REGINALD
FS NAVA, PETER DE GUZMAN
FS PADILLA, ANGELITO
FA CRUZ, MARIA
FA MONTINOLA, NANCY
FA VICTA, ROSE ANN (Emphasis supplied)

Another email⁸ enumerated the list of items taken from the crew members:

Katie,

Here is the list.

Flight Crew Blitz in gate area 10 crew. Seven of the 10 crew members had items removed from the aircraft on their possession. Two additional bags were found on jet-way after blitz. No bonded items were found but crew removed food items as listed:

18 bags Doritos
15 bags Banana Chips
5 pkg instant chocolate
5 bars Granola
18 bars Kit Kat
34 Chocolate flavored Goldilocks

³ *Rollo*, pp. 55–56.

⁴ This case is docketed as CA-G.R. SP NO. 112552.

⁵ *Rollo*, pp. 52–53.

⁶ Id. at 124, clarificatory hearing dated April 12, 2008.

⁷ Id. at 397. The existence of the email was based on the affidavit of Jaime Roberto A. Narciso, International Cabin Crew Division Manager of Philippine Airlines.

⁸ Id.

16 Regular Goldilocks cakes
9 1st class Bulgari Kits
2 magazines
6 rolls toilet paper
9 cans soda
16 bottles of water
1 yogurt
12 small ice creams
2 jars salsa
2 bottles Orange Juice
1 bottle Cranberry Juice
1 bottle smoothie

All items returned to Philippine Airlines.

Nancy I. Graham
Supervisory CBPO
A-TCET Air
Honolulu Hi

PAL conducted an investigation. Montinola was among those implicated because she was mentioned in Graham's email.⁹ On February 1, 2008, PAL's Cabin Services Sub-Department required Montinola to comment on the incident.¹⁰ She gave a handwritten explanation three days after, stating that she did not take anything from the aircraft. She also committed to give her full cooperation should there be any further inquiries on the matter.¹¹

On February 22, 2008, PAL's International Cabin Crew Division Manager, Jaime Roberto A. Narciso (Narciso), furnished Montinola the emails from the Honolulu customs official.¹² This was followed by a notice of administrative charge¹³ which Narciso gave Montinola on March 25, 2008. On April 12, 2008, there was a clarificatory hearing.¹⁴ The clarificatory hearing was conducted by a panel of PAL's Administrative Personnel, namely, Senior Labor Counsel Atty. Crisanto U. Pascual (Atty. Pascual), Narciso, Salvador Cacho, June Mangahas, Lina Mejias, Carolina Victorino, and Ruby Manzano.¹⁵

Montinola alleged that her counsel objected during the clarificatory hearing regarding PAL's failure to specify her participation in the alleged pilferage.¹⁶ Atty. Pascual threatened Montinola that a request for clarification would result in a waiver of the clarificatory hearing.¹⁷ This

⁹ Id. at 60–64, notice of administrative charge dated March 25, 2008.

¹⁰ Id. at 57.

¹¹ Id., handwritten answer was dated February 4, 2008.

¹² Id. at 58–59.

¹³ Id. at 60–64.

¹⁴ Id. at 119–125.

¹⁵ Id. at 114.

¹⁶ Id. at 33.

¹⁷ Id. at 26.

matter was not reflected in the transcript of the hearing.¹⁸ Despite her counsel's objections, Montinola allowed the clarificatory hearings to proceed because she "wanted to extend her full cooperation [in] the investigation[s]."¹⁹

During the hearing, Montinola admitted that in Honolulu, US customs personnel conducted a search of her person. At that time, she had in her possession only the following food items: cooked *camote*, 3-in-1 coffee packs, and Cadbury hot chocolate.²⁰

PAL, through Senior Assistant Vice President for Cabin Services Sub-Department Sylvia C. Hermosisima, found Montinola guilty of 11 violations²¹ of the company's Code of Discipline and Government Regulation. She was meted with *suspension* for one (1) year without pay.²² Montinola asked for a reconsideration.²³ Hermosisima, however, denied her motion for reconsideration a month after.²⁴

Montinola brought the matter before the Labor Arbiter.²⁵ The Labor Arbiter²⁶ found her suspension illegal,²⁷ finding that PAL never presented evidence that showed Montinola as the one responsible for any of the illegally taken airline items.²⁸ The Labor Arbiter ordered Montinola's reinstatement with backwages, inclusive of allowances and benefits amounting to ₱378,630.00.²⁹

In addition, the Labor Arbiter awarded *moral damages* in the amount of ₱100,000.00 and *exemplary damages* amounting to ₱100,000.00 for the following reasons:³⁰

This Office observes that the records are replete with substantial evidence that the circumstances leading to complainant's one-year suspension without pay are characterized by arbitrariness and bad faith on the part of respondents. The totality of respondents' acts clearly shows that complainant had been treated unfairly and capriciously, for which complainant should be awarded moral damages in the amount of One Hundred Thousand Pesos (₱100,000.00) and exemplary damages also in the amount of One Hundred Thousand Pesos (₱100,000.00).³¹

¹⁸ Id. at 119.

¹⁹ Id. at 26.

²⁰ Id. at 609.

²¹ Id. at 60–64.

²² Id. at 181–185, decision dated May 30, 2008.

²³ Id. at 186–198.

²⁴ Id. at 200.

²⁵ Id. at 826–828.

²⁶ Labor Arbiter Romelita N. Rioflorido.

²⁷ *Rollo*, pp. 608–628.

²⁸ Id. at 622.

²⁹ Id. at 626.

³⁰ Id. at 627.

³¹ Id. at 626–627.

The Labor Arbiter also awarded *attorney's fees* to Montinola because she was “forced to litigate and incur expenses to protect [her] rights.”³²

PAL appealed the Labor Arbiter's decision to the National Labor Relations Commission (NLRC).³³ During the pendency of the appeal, PAL submitted new evidence consisting of an affidavit executed by Nancy Graham, the Customs and Border Protection Supervisor who witnessed the January 29, 2008 search in Honolulu.³⁴ This affidavit enumerated the names of the flight crew members searched by the Honolulu customs officials. However, the National Labor Relations Commission observed that “it was categorically admitted in the said declaration that Ms. Graham did not know which items were attributable to each of the seven crew members whom she identified and there was no individual inventories (sic).”³⁵

Through the resolution³⁶ dated June 9, 2009, the National Labor Relations Commission³⁷ affirmed the decision of the Labor Arbiter. PAL appealed the Commission's decision to the Court of Appeals through a petition for certiorari.³⁸

The Court of Appeals affirmed the decisions of the Labor Arbiter and National Labor Relations Commission in finding the suspension illegal.³⁹ However, the Court of Appeals modified the award:

WHEREFORE, premises considered, the petition is **DENIED**. Respondent NLRC's Decision in NLRC LAC No. 01000263-09 (NLRC NCR CN 08-11137-08), dated June 9, 2009, is **AFFIRMED** with **MODIFICATION** in that *the award of moral and exemplary damages and attorney's fees to private respondent are deleted*.⁴⁰ (Emphasis supplied)

The Court of Appeals deleted the moral and exemplary damages and attorney's fees stating that:

Relevant to the award of moral damages, not every employee who is illegally dismissed or suspended is entitled to damages. Settled is the rule that moral damages are recoverable only where the dismissal or

³² Id.

³³ Id. at 629–661.

³⁴ Id. at 1677–1679.

³⁵ Id. at 744.

³⁶ Id. at 732–745.

³⁷ The resolution was penned by Commissioner Numeriano D. Villena and Presiding Commissioner Herminio V. Suelo and Commissioner Angelo Ang Palaña, concurring, from the Seventh Division.

³⁸ *Rollo*, pp. 751–780.

³⁹ Id. at 41–53.

⁴⁰ Id. at 52–53.

suspension of the employee was attended by bad faith or fraud, or constituted an act oppressive to labor, or was done in a manner contrary to morals, good customs or public policy. Bad faith does not simply mean negligence or bad judgment. It involves a state of mind dominated by ill will or motive. It implies a conscious and intentional design to do a wrongful act for a dishonest purpose or some moral obliquity. The person claiming moral damages must prove the existence of bad faith by clear and convincing evidence for the law always presumes good faith.

In the case at bar, there is no showing that PAL was moved by any ill will or motive in suspending private respondent. It is evident that petitioner gave private respondent every opportunity to refute the charges against her and to present her side as part of due process. These negate the existence of bad faith on the part of petitioner. Under the circumstances, we hold that private respondent is not entitled to moral damages and exemplary damages. Furthermore, the Court finds the award of attorney's fees improper. The award of attorney's fees was merely cited in the dispositive portion of the decision without the RTC [sic] stating any legal or factual basis for said award.⁴¹ (Citations omitted)

Montinola filed a partial motion for reconsideration,⁴² praying that the award of moral and exemplary damages and attorney's fees be reintegrated into the decision. PAL also filed a motion for reconsideration,⁴³ but its motion sought a complete reversal of the decision.

The Court of Appeals denied both motions.⁴⁴ Only Montinola sought to continue challenging the Court of Appeals' decision through a petition for review on certiorari⁴⁵ brought to this court.

The sole issue in this case is whether Montinola's illegal suspension entitled her to an award of moral and exemplary damages and attorney's fees.

Montinola claims that she is entitled to moral damages because her illegal suspension was attended by bad faith, causing her to suffer "mental anguish, fright, serious anxiety, and moral shock."⁴⁶ Furthermore, the illegal suspension tarnished her good standing.⁴⁷ Prior to this incident and in her 12 years of service, she was never charged administratively.⁴⁸ The illegal suspension likewise affected her family because it created "a state of uncertainty and adversity."⁴⁹

⁴¹ Id. at 51–52, *citing Cual v. Leonis Navigation*, G.R. No. 167775, October 10, 2005 (resolution, unpublished).

⁴² Id. at 1595–1599.

⁴³ Id. at 1577–1592.

⁴⁴ Id. at 55–56.

⁴⁵ Id. at 18–36.

⁴⁶ Id. at 31–32.

⁴⁷ Id. at 32.

⁴⁸ Id. at 34.

⁴⁹ Id. at 32.

Montinola underscores that the investigation against her was conducted in a “hasty, impetuous, harsh and unjust”⁵⁰ manner. She was not properly apprised of the charges against her.⁵¹ She requested for proper notice of the acts violative of PAL’s Code of Discipline. Instead of giving proper notice, PAL threatened that she would be waiving her right to a clarificatory hearing if she insisted on her request.⁵²

Montinola likewise alleges that PAL violated its own rules by not applying the same penalty uniformly.⁵³ Flight Purser Juan Chuidian III was involved in the same incident and was likewise suspended. However, on motion for reconsideration, PAL allowed him to retire early without serving the penalty of suspension.⁵⁴

The claim for exemplary damages is anchored on Montinola’s belief that such damages “are designed to permit the courts to mould behaviour that has socially deleterious consequences, and their imposition is required by public policy to suppress the wanton acts of the offender.”⁵⁵ In Montinola’s view, PAL suspended her in a “wanton, oppressive, and malevolent manner.”⁵⁶

Finally, Montinola argues that she is entitled to attorney’s fees because she was forced to litigate. In Article 2208, paragraph (2) of the Civil Code, individuals forced to litigate may ask for attorney’s fees.

On the other hand, PAL argues that moral damages are only recoverable when “the dismissal of the employee was attended by bad faith or fraud, or constituted an act oppressive to labor, or was done in a manner contrary to morals, good customs or public policy.”⁵⁷ The company believes that Montinola failed to present clear and convincing proof of bad faith.

PAL stands by how it investigated the alleged pilferage of the in-flight items in the January 29, 2008 flight. It believes that it afforded due process to Montinola and the other implicated crew members. From PAL’s point of view, she was given an opportunity to explain her side and was even assisted by counsel of her choice.⁵⁸

⁵⁰ Id.

⁵¹ Id. at 33.

⁵² Id.

⁵³ Id. at 77, PAL’s Code of Discipline, Article 4, states the following: “Discipline shall be imposed consistently. It shall be applied uniformly to offenders similarly situated regardless of rank or positions within the company. The same sanctions shall be applied on any offender for offenses committed under similar facts and circumstances. Like penalties shall be imposed for like offenses.”

⁵⁴ *Rollo*, pp. 33–34.

⁵⁵ Id. at 35, citing *Keirulf v. Court of Appeals*, 336 Phil. 414 (1997) [Per J. Panganiban, Third Division].

⁵⁶ *Rollo*, p. 35.

⁵⁷ Id. at 1680, citing *M+W Zander Philippines, Inc. v. Enriquez*, 606 Phil. 591, 612 (2009) [Per C.J. Puno, First Division].

⁵⁸ *Rollo*, p. 1681.

PAL claims that since moral damages have not been proven, exemplary damages should likewise not be awarded.⁵⁹

Moreover, PAL argues that Montinola failed to provide basis for the award of attorney's fees. Attorney's fees are only awarded when the trial court (or in this case, the Labor Arbiter) states a factual, legal, or equitable justification for awarding the same.⁶⁰

I

Montinola is entitled to moral and exemplary damages. She is also entitled to attorney's fees.

The Labor Code provides:

Art. 279. *Security of Tenure* – In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

Security of tenure of workers is not only statutorily protected, it is also a constitutionally guaranteed right.⁶¹ Thus, any deprivation of this right must be attended by due process of law.⁶² This means that any disciplinary action which affects employment must pass due process scrutiny in both its substantive and procedural aspects.

The constitutional protection for workers elevates their work to the status of a vested right. It is a vested right protected not only against state action but against the arbitrary acts of the employers as well. This court in *Philippine Movie Pictures Workers' Association v. Premier Productions, Inc.*⁶³ categorically stated that "[t]he right of a person to his labor is deemed to be property within the meaning of constitutional guarantees."⁶⁴

⁵⁹ Id. at 1682.

⁶⁰ Id. at 1683, citing *Nazareno v. City of Dumaguete*, 607 Phil. 768, 807–808 (2009) [Per J. Chico-Nazario, En Banc].

⁶¹ CONST. art. XIII, sec. 3, par. 2 states:

"It shall guarantee the rights of all workers. . . . They shall be entitled to security of tenure, humane conditions of work, and a living wage. . . ."

⁶² CONST. art. III, sec. 1 states:

"No person shall be deprived of life, liberty or property without due process of law."

⁶³ 92 Phil. 843 (1953) [Per J. Bautista Angelo, En Banc].

⁶⁴ Id. at 848.

Moreover, it is of that species of vested constitutional right that also affects an employee's liberty and quality of life. Work not only contributes to defining the individual, it also assists in determining one's purpose. Work provides for the material basis of human dignity.

Suspension from work is *prima facie* a deprivation of this right. Thus, termination and suspension from work must be reasonable to meet the constitutional requirement of due process of law. It will be reasonable if it is based on just or authorized causes enumerated in the Labor Code.⁶⁵

On the other hand, articulation of procedural due process in labor cases is found in Article 277(b) of the Labor Code, which states:

(b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause and without prejudice to the requirement of notice under Article 283 of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with the company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment. Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer.

The procedure can be summarized in this manner. First, the employer must furnish the employee with a written *notice* containing the cause for termination. Second, the employer must give the employee an *opportunity to be heard*. This could be done either through a position paper or through a clarificatory hearing.⁶⁶ The employee may also be assisted by a representative or counsel. Finally, the employer must give another written *notice* apprising the employee of its findings and the penalty to be imposed against the employee, if any.⁶⁷ In labor cases, these requisites meet the constitutional requirement of procedural due process, which “contemplates

⁶⁵ Article 282 (*Termination by Employer*) of the Labor Code enumerates **just causes**, while Articles 283 (*Closure of Establishment and Reduction of Personnel*) and 284 (*Disease as Ground for Termination*) present **authorized causes** for termination of employment by the employer. See *National Labor Relations Commission v. Salgarino*, 529 Phil. 355, 367 (2006) [Per J. Chico-Nazario, First Division].

⁶⁶ See *Perez v. Philippine Telegraph and Telephone Company*, 602 Phil. 522, 541 (2009) [Per J. Corona, En Banc], stating:
“The employee can be fully afforded a chance to respond to the charges against him, adduce his evidence or rebut the evidence against him through a wide array of methods, verbal or written.”

⁶⁷ See *Voyeur Visage Studio, Inc. v. Court of Appeals*, 493 Phil. 831, 840 (2005) [Per J. Garcia, Third Division]. The need for 1) a notice apprising the acts and omissions of the employee for which discipline is sought; and 2) a notice informing the penalty of the employer, is referred to as the “twin notice requirement” in labor law.

notice and opportunity to be heard before judgment is rendered, affecting one's person or property.”⁶⁸

In this case, PAL complied with procedural due process as laid out in Article 277, paragraph (b) of the Labor Code. PAL issued a written notice of administrative charge, conducted a clarificatory hearing, and rendered a written decision suspending Montinola. However, we emphasize that the written notice of administrative charge did not serve the purpose required under due process. PAL did not deny her allegation that there would be a waiver of the clarificatory hearing if she insisted on a specific notice of administrative charge. With Montinola unable to clarify the contents of the notice of administrative charge, there were irregularities in the procedural due process accorded to her.

Moreover, PAL denied Montinola substantial due process.

Just cause has to be supported by substantial evidence. Substantial evidence, or “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion,”⁶⁹ is the quantum of evidence required in administrative bodies such as the National Labor Relations Commission. It is reasonable to expect the employer to consider substantial evidence in disciplinary proceedings against its employees. The employer's decision will be subject to review by the Labor Arbiter and National Labor Relations Commission.

The employer has the burden of proof in showing that disciplinary action was made for lawful cause.⁷⁰ The employer must consider and show facts adequate to support the conclusion that an employee deserves to be disciplined for his or her acts or omissions.

PAL, however, merely relied on these pieces of information in finding administrative liability against Montinola:

1) a list of offenses found in PAL's Code of Discipline that Montinola allegedly violated;

⁶⁸ *Lopez v. Director of Lands*, 47 Phil. 23, 32 (1924) [Per J. Johnson, En Banc], citing Mr. Daniel Webster's definition of “due process of law” in his arguments before the US Supreme Court for the famous Dartmouth College case.

⁶⁹ *Ang Tibay v. CIR*, 69 Phil. 635, 642–643 (1940) [Per J. Laurel, En Banc], citing *Appalachian Electric Power v. National Labor Relations Board*, 4 Cir., 93 F. 2d 985, 989; *National Labor Relations Board v. Thompson Products*, 6 Cir., 97 F. 2d 13, 15; *Ballston-Stillwater Knitting Co. v. National Labor Relations Board*, 2 Cir., 98 F. 2d 758, 760.

⁷⁰ In *Dizon v. National Labor Relations Commission*, 259 Phil. 523, 528 (1989) [Per J. Feliciano, Third Division], it was stated that “in an unlawful dismissal case, the employer has the burden of proving the lawful cause sustaining the dismissal of the employee.” This principle applies analogously to cases involving suspension of an employee.

2) a list of flight crew members that were checked at the Honolulu airport; and

3) a list of all items confiscated from *all* these flight crew members.

The lists are not sufficient to show the participation of any of the flight crew members, least of all Montinola. None of the evidence presented show that the customs officials confiscated any of these items from her. Thus, the evidence by themselves do not show that Montinola pilfered airline items.

Together with the manner in which the investigation proceeded, i.e., that Montinola was prevented from asking for clarification of the charges against her, the absence of substantial evidence is so apparent that disciplining an employee only on these bases constitutes bad faith.

Under the Labor Code, Labor Arbiters are authorized by law to award moral and exemplary damages:

Art. 217. Jurisdiction of Labor Arbiters and the Commission. – (a) Except as otherwise provided under this Code, the Labor Arbiters shall have original and exclusive jurisdiction to hear and decide within thirty (30) calendar days after the submission of the case by the parties for decision without extension, even in the absence of stenographic notes, the following cases involving all workers, whether agricultural or non-agricultural:

. . . .

4. Claims for actual, *moral, exemplary and other forms of damages* arising from the employer-employee relations[.]

The nature of moral damages is defined under our Civil Code. Article 2220 states that “[w]illful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith.” In *Primero v. Intermediate Appellate Court*,⁷¹ this court stated that damages, as defined in the Civil Code, is recoverable in labor cases. Thus, moral damages:

. . . cannot be justified solely upon the premise (otherwise sufficient for redress under the Labor Code) that the employer fired his employee without just cause or due process. Additional facts must be pleaded and proven to warrant the grant of moral damages under the Civil Code, these being, to repeat, that the act of dismissal was *attended by bad*

⁷¹ 240 Phil. 412 (1987) [Per J. Narvasa, First Division].

*faith or fraud, or was oppressive to labor, or done in a manner contrary to morals, good customs, or public policy; and, of course, that social humiliation, wounded feelings, grave anxiety, etc., resulted therefrom.*⁷²

The employee is entitled to moral damages when the employer acted a) in bad faith or fraud; b) in a manner oppressive to labor; or c) in a manner contrary to morals, good customs, or public policy.

Bad faith “implies a conscious and intentional design to do a wrongful act for a dishonest purpose or moral obliquity.”⁷³ *Cathay Pacific Airways v. Spouses Vazquez*⁷⁴ established that bad faith must be proven through clear and convincing evidence.⁷⁵ This is because “[b]ad faith and fraud . . . are serious accusations that can be so conveniently and casually invoked, and that is why they are never presumed. They amount to mere slogans or mudslinging unless convincingly substantiated by whoever is alleging them.”⁷⁶ Here, there was clear and convincing evidence of bad faith adduced in the lower tribunals.

PAL’s actions in implicating Montinola and penalizing her for no clear reason show bad faith. PAL’s denial of her request to clarify the charges against her shows its intent to do a wrongful act for moral obliquity. If it were acting in good faith, it would have gathered more evidence from its contact in Honolulu or from other employees before it started pointing fingers. PAL should not have haphazardly implicated Montinola and denied her livelihood even for a moment.

PAL apparently granted Montinola procedural due process by giving her a notice of administrative charge and conducting a hearing. However, this was more apparent than real. The notice of administrative charge did not specify the acts committed by Montinola and how these acts violated PAL’s Code of Discipline. The notice did not state which among the items confiscated by the US customs officials were originally found in Montinola’s possession. Worse, the panel of PAL officers led by Atty. Pascual did not entertain any query to clarify the charges against her.

There is denial of an opportunity to be heard if the employee is not clearly apprised of the acts she committed that constituted the cause for disciplinary action. The Omnibus Rules Implementing the Labor Code requires that “a written notice [be] served on the employee specifying the ground or grounds for termination, and giving said employee *reasonable*

⁷² Id. at 421.

⁷³ *Laureano Investments and Development Corp. v. Court of Appeals*, 338 Phil. 759, 771 (1997) [Per J. Panganiban, Third Division].

⁷⁴ 447 Phil. 306 (2003) [Per C.J. Davide, Jr., First Division]. This is not a labor case; it is a civil case for damages.

⁷⁵ Id. at 321.

⁷⁶ Id.

opportunity within which to explain his side.”⁷⁷ Reasonable opportunity has been described as “every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense.”⁷⁸

When the alleged participation of the employee in the illicit act which serves as a basis for the disciplinary action is not clear from the notice, the opportunity to be heard will not be reasonable. The notice fails to meet reasonable standards. It does not have enough information to enable the employee to adequately prepare a defense.

Moreover, the list of provisions in PAL’s Code of Discipline allegedly violated was long and exhaustive. PAL’s notice of administrative charge stated that it had probable cause to administratively charge Montinola of the following:

I. ILLEGAL ACTS – Section 2/Article 20

....

As a cabin attendant you should know very well the laws, rules and regulations of every country in which the Company operates including the entry/exit requirements to which your cabin crew must adhere.

II. VIOLATION OF LAW/GOVERNMENT REGULATIONS – Section 6/Article 46

....

Incident is a violation of the Entry/Exit requirements in HNL Station, as quoted:

“Note: U.S. Customs Trade Law/Sec. 301 on Intellectual Property Right prohibits bringing of counterfeit consumer goods such as fake bags, clothes, shoes, colognes, books, medicine, audio/video tapes & CD’s.” (ref. Entry-Exit Requirements Quick Reference Guide–Transpacific)

III. ANTI-COMPANY OFFENSES – Article 44/Section 5

....

As noted on the e-mail report from HNL Station dated 30 January 2008, PAL will be penalized by customs and border protection – HNL due to cabin crew took items again from the aircraft upon arrival.

Article 26 NON-OBSERVANCE OF QUALITY STANDARDS

⁷⁷ Omnibus Rules Implementing the Labor Code (1989), book VI, rule I, sec. 2(d)(i).

⁷⁸ *King of Kings Transport, Inc. v. Mamac*, 553 Phil. 108, 116 (2007) [Per J. Velasco, Second Division].

....

As a cabin attendant, it is your responsibility to strictly adhered [sic] to the rules, regulations, prescriptions, mandates and policies of the Company.

Article 28 INEFFICIENCY AND WASTE

....

The subject items confiscated at the holding gate area are Company supplies and resources which must only be consumed or utilized reasonably inflight [sic].

Article 37 ANTI-TEAMWORK OFFENSES

....

In the email report from HNL Station, Ms. Nancy Graham, CBP–Supervisor your name was specifically listed as part of the cabin crew members who were involved in the Flight Crew Blitz in gate area.

Article 38 INSUBORDINATIONS OR WILLFUL
DISOBEDIENCE

....

Article 58 MISHANDLING/MISUSE OF COMPANY
FUNDS, PROPERTY OR RECORDS

....

The subject items confiscated at the holding gate area are Company supplies and resources which must only be consumed or utilized reasonably inflight [sic].

Article 59 THEFT, PILFERAGE, OR
EMBEZZLEMENT

....

As noted on the e-mail reports from HNL Station both from Station Supervisor, Ms. Keity Wells and Ms. Nancy Graham, CBP–Supervisor, The different items confiscated are taken by the cabin crew from the aircraft upon arrival.

Article 61 UNOFFICIAL USE OF COMPANY
PROPERTY AND FACILITIES

....

IV. FAILURE ON THE JOB – Article 25/Section 2

....

As a cabin attendant, you should know very well the certain laws, rules and regulations of every country in which the Company operates. Thus, adherence (sic) to these rules and regulations is a must.⁷⁹

To constitute proper notice, the facts constitutive of the violations of these rules — and not just the rules of conduct — must be clearly stated. Proper notice also requires that the alleged participation of the employee be clearly specified. Without these, the most fundamental requirement of a fair hearing cannot be met.

Parenthetically, we note that the enumeration of rules violated even included violation of “U.S. Customs Trade Law/Sec. 301 on Intellectual Property Right.” This has no bearing on the basis for the termination or suspension of the employee. It only serves to confuse. At worse, it is specified simply to intimidate.

Montinola was found by PAL to be guilty of *all* the charges against her. According to PAL, “[t]hese offenses call for the imposition of the penalty of Termination, however, we are imposing upon you the reduced penalty of One (01) year Suspension.”⁸⁰ It is not clear how she could violate all the prestations in the long list of rules she allegedly violated. There is also no clear explanation why termination would be the proper penalty to impose. That the penalty was downgraded, without legal explanation, to suspension appears as a further badge of intimidation and bad faith on the part of the employer.

Nothing in PAL’s action supports the finding that Montinola committed specific acts constituting violations of PAL’s Code of Discipline.

This act of PAL is contrary to morals, good customs, and public policy. PAL was willing to deprive Montinola of the wages she would have earned during her year of suspension even if there was no substantial evidence that she was involved in the pilferage.

Moral damages are, thus, appropriate. In *Almira v. B.F. Goodrich Philippines*, this court noted that unemployment “brings untold hardships and sorrows on those dependent on the wage-earner.”⁸¹ This is also true for the case of suspension. Suspension is temporary unemployment. During the year of her suspension, Montinola and her family had to survive without her usual salary. The deprivation of economic compensation caused mental anguish, fright, serious anxiety, besmirched reputation, and wounded

⁷⁹ *Rollo*, pp. 60–64.

⁸⁰ *Id.* at 185.

⁸¹ *Almira v. B.F. Goodrich Philippines, Inc.*, 157 Phil. 110, 121–122 (1974) [Per J. Fernando, Second Division].

feelings. All these are grounds for an award of moral damages under the Civil Code.⁸²

II

Montinola is also entitled to exemplary damages.

Under Article 2229 of the Civil Code, “[e]xemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.” As this court has stated in the past: “Exemplary damages are designed by our civil law to permit the courts to reshape behaviour that is socially deleterious in its consequence by creating negative incentives or deterrents against such behaviour.”⁸³

If the case involves a contract, Article 2332 of the Civil Code provides that “the court may award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive or malevolent manner.” Thus, in *Garcia v. NLRC*,⁸⁴ this court ruled that in labor cases, the court may award exemplary damages “if the dismissal was effected in a wanton, oppressive or malevolent manner.”⁸⁵

It is socially deleterious for PAL to suspend Montinola without just cause in the manner suffered by her. Hence, exemplary damages are necessary to deter future employers from committing the same acts.

III

Montinola is also entitled to attorney’s fees.

Article 2208 of the Civil Code enumerates the instances when attorney’s fees can be awarded:

⁸² CIVIL CODE, art. 2217: Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of the defendant’s wrongful act or omission.

⁸³ *Mecenas v. Court of Appeals*, 259 Phil. 556, 574 (1989) [Per J. Feliciano, Third Division].

⁸⁴ G.R. No. 110518, August 1, 1994, 234 SCRA 632 [Per J. Cruz, First Division]. This case involved retrenchment. While this court denied moral and exemplary damages, the case provides definitions on when these awards are appropriate in labor cases.

⁸⁵ *Id.* at 638.

ART. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

- (1) *When exemplary damages are awarded;*
- (2) *When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;*
- (3) In criminal cases of malicious prosecution against the plaintiff;
- (4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
- (5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
- (6) In actions for legal support;
- (7) *In actions for the recovery of wages of household helpers, laborers and skilled workers;*
- (8) In actions for indemnity under workmen's compensation and employer's liability laws;
- (9) In a separate civil action to recover civil liability arising from a crime;
- (10) When at least double judicial costs are awarded;
- (11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable. (Emphasis supplied)

This case qualifies for the first, second, and seventh reasons why attorney's fees are awarded under the Civil Code.

First, considering that we have awarded exemplary damages in this case, attorney's fees can likewise be awarded.

Second, PAL's acts and omissions compelled Montinola to incur expenses to protect her rights with the National Labor Relations Commission and the judicial system. She went through four tribunals, and she was assisted by counsel. These expenses would have been unnecessary if PAL had sufficient basis for its decision to discipline Montinola.

Finally, the action included recovery for wages. To bring justice to the illegal suspension of Montinola, she asked for backwages for her year of suspension.

PAL argued that the factual, legal, or equitable justification for awarding attorney's fees must be stated in the Labor Arbiter's decision. The legal justification of the Labor Arbiter is apparent in the decision:

Complainant's claim for attorney's fees is also justified. It is settled that where an employee was forced to litigate and incur expenses to protect his rights and interest, as in the instant case, he is entitled to an award of attorney's fees (*Building Case Corp. vs. NLRC*, G.R. No. 94237, February 26, 1997). She is thus granted attorney's fees equivalent to ten percent of the total award.⁸⁶

We find no factual, legal, or equitable reason to depart from this justification. Hence, we also affirm the award of attorney's fees equivalent to 10% of the total award, or ₱57,863.00.⁸⁷

We acknowledge the right of PAL to be constantly vigilant to prevent and deter pilferage. After all, that is equally its property which is also protected by the Constitution. However, PAL cannot assume liability on the employee. It has to endeavor to move through its administrative investigations more humanely and more in consonance with the law. Its employees may only have their work. It is their work, no matter what the classification and how significant they may be in the eyes of their employer, that should give them their dignity.

WHEREFORE, the petition is GRANTED. The decision of the Court of Appeals in CA-G.R. SP No. 112552 is MODIFIED in order to REINTEGRATE the award for moral damages of ₱100,000.00, exemplary damages of ₱100,000.00, and attorney's fees of ₱57,863.00.

SO ORDERED.


MARVIC M.V.F. LEONEN
Associate Justice

⁸⁶ *Rollo*, p. 627.

⁸⁷ The Court of Appeals only deleted the moral and exemplary damages, and attorney's fees. In effect, it agreed to the award of backwages amounting to ₱378,630.00 (*Rollo*, pp. 52-53). Including moral and exemplary damages reinstated in this decision (₱100,000.00 for moral damages, another for ₱100,000.00 exemplary damages), the total award is ₱578,630.00. 10% of ₱578,630.00 is ₱57,863.00.

WE CONCUR:



ANTONIO T. CARPIO

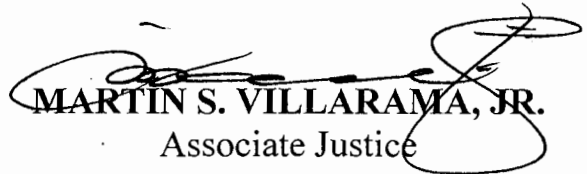
Associate Justice

Chairperson



MARIANO C. DEL CASTILLO

Associate Justice



MARTIN S. VILLARAMA, JR.

Associate Justice



BIENVENIDO L. REYES

Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO

Acting Chief Justice